Between Two Laws: Tenure Regimes in the Pearl Islands

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> It merely seems that white colonists alienated the black man's land. In truth they alienated him from his land. The land is still there and it is economically far more valuable than ever before. But it is no longer the same land because people see it through different eyes. It is now divided into smaller or larger boxes which must be owned because they are property. The battle-cry of the stolen land signifies the triumph and not the failure of colonialism. Thereafter land tenure conversion and resettlement schemes are very logical steps.
>
> PETER SACK, *Problem of Choice*

Over the past decade and a half, the Tuamotu Archipelago, whose lagoons are abundant with the black-lipped pearl oyster *(Pinctada margaritifera),* has become the site of a pearl-farming boom. Adapting mariculturaltechnology first developed by the Japanese, post-larval pearl oysters are captured from lagoon plankton ("spat collection"), raised to maturity on floating lines ("grow-out"), and pearl production ("pearl culture") is induced using surgical techniques (Coeroli, de Gaillandee, and Landret 1984). The dark-hued pearls are in high demand internationally and have provided a major boost to the economy of French Polynesia. Pearl farming is regulated by the Department of Sea and Aquaculture, a branch of the autonomous territorial government based in Pape'ete, Tahiti.

Pearl farming has proven difficult to regulate. The interests of the French and Chinese-Tahitian entrepreneurs who played a major role in the early trials, production technology, and market development have

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often been at odds with the interests of indigenous Tuamotuans. The position of the administration is that lagoons are part of the public domain and that all residents of French Polynesia are eligible to apply for concessions in any lagoon, providing they prove their ability to farm pearls and pay the required annual fees for the concession area. Tuamotuans, however, find themselves increasingly displaced from high-valued shorefront land and lagoon space.

At the heart of the problem is a tenure code imposed over a century ago by the French colonial administration and never completely accepted by the indigenous people. This article, based on archival research and fieldwork conducted in 1990 and 1991, shows how land and lagoon tenure codes imposed by the French and sanctioned more recently by the emerging "postcolonial" Tahitian administration compare with de facto tenure arrangements in the Tuamotu Archipelago. It shows that Tuamotuans have attempted, with varying degrees of success, to hold onto their ancestral territorial resources by tenuously balancing between "old" and "new" legal systems, and that tenure regimes provide an important arena for political contestation.

Historical Changes in Government and Tenure

At the time of European contact, Tuamotuan land was claimed by *gati* (descent groups) who traced their genealogies to the ancestral settlers of the atoll. Both kinship and residence were preconditions for access to ancestral land (Ottino 1972). By moving away from the land, a person could sever connections with the resident group, eventually forfeiting rights to land. Except for the rare situation of conquest by warfare, outsiders could only gain access to land through incorporation into one of the resident groups, normally through marriage or adoption.

The joint requirements of descent and residence gave the system a powerful resilience. If group members moved elsewhere, the land was allocated to the collateral kin. If migrants returned, their rights could be reactivated. If a person had few or no children, the land would be transferred to the next of kin. Over time, group landholdings fluctuated, but the supply of land was equilibrated with local demand. As long as residents were affiliated with one of the local groups, there was little likelihood of their becoming landless.

Lagoon rights were claimed exclusively by the indigenous inhabitants

of each Tuamotuan atoll (Figure 1). In small or sparsely populated atolls where a single group inhabited the entire atoll, the lagoon was used collectively by all the inhabitants. On large atolls (such as Rangiroa) and more densely populated atolls (such as Anaa), the lagoon was divided into parallel sectors adjacent to the land. Lagoon claims were connected with the rights to land, and the strength of the claims and the defense of the rights waned with distance from land (*AT* 1863).

The atolls were ruled by local chiefs, and in some cases, by the powerful chiefs of neighboring atolls. A common saying in Tahiti (applicable to the Tuamotus as well) was *Te iho o te fenua te ari'i* (The chief is the essence of the land). The power of the chiefs derived from their descent from the senior ancestral lineage. Individuals and their households had the rights to use the lagoon for fishing, pearl diving, transport, and recreation, but chiefs would periodically decree *rahui* (taboos) on certain sectors, reserving the produce for ceremonial occasions.

Around 1805, a series of devastating wars erupted in the western and central Tuamotus. The Parata, fierce warriors from Anaa Atoll, sailed in large fleets of double-hulled canoes across the archipelago, laying waste the communities in their path. Men were killed or forced to flee, while women and children were carried off to Anaa. Escapees took refuge in eastern Tahiti, where they came under the protection of King Pomare II. By 1820, Pomare's influence extended over Anaa, permitting the Tuamotuans to return to their home atolls, but upsetting and restructuring the traditional balance of power (Danielsson 1955).

Under European influence, the power of the chiefs was further eroded and the traditional tenure systems were weakened. The shift to cash cropping led to increased contacts with European traders, and land was sold to outsiders, often as a consequence of debt. To prevent land alienation (and also to discourage competition with their own power) Pomare's missionary advisers promoted a series of codes (1819–1822) prohibiting natives from selling or leasing their land. An indigenous court *(to'ohitu)* was given jurisdiction over land disputes in each archipelago of French Polynesia.

Tahiti became a French protectorate in 1842, and a series of decrees were enacted that loosened restrictions on land transactions. In 1845, a decree allowed the free transfer of land by any indigenous right holder, subject to administrative approval. In 1847, private registration of land was made compulsory, but problems soon emerged. Many Islanders lost their official rights because they missed the registration deadline. Also,

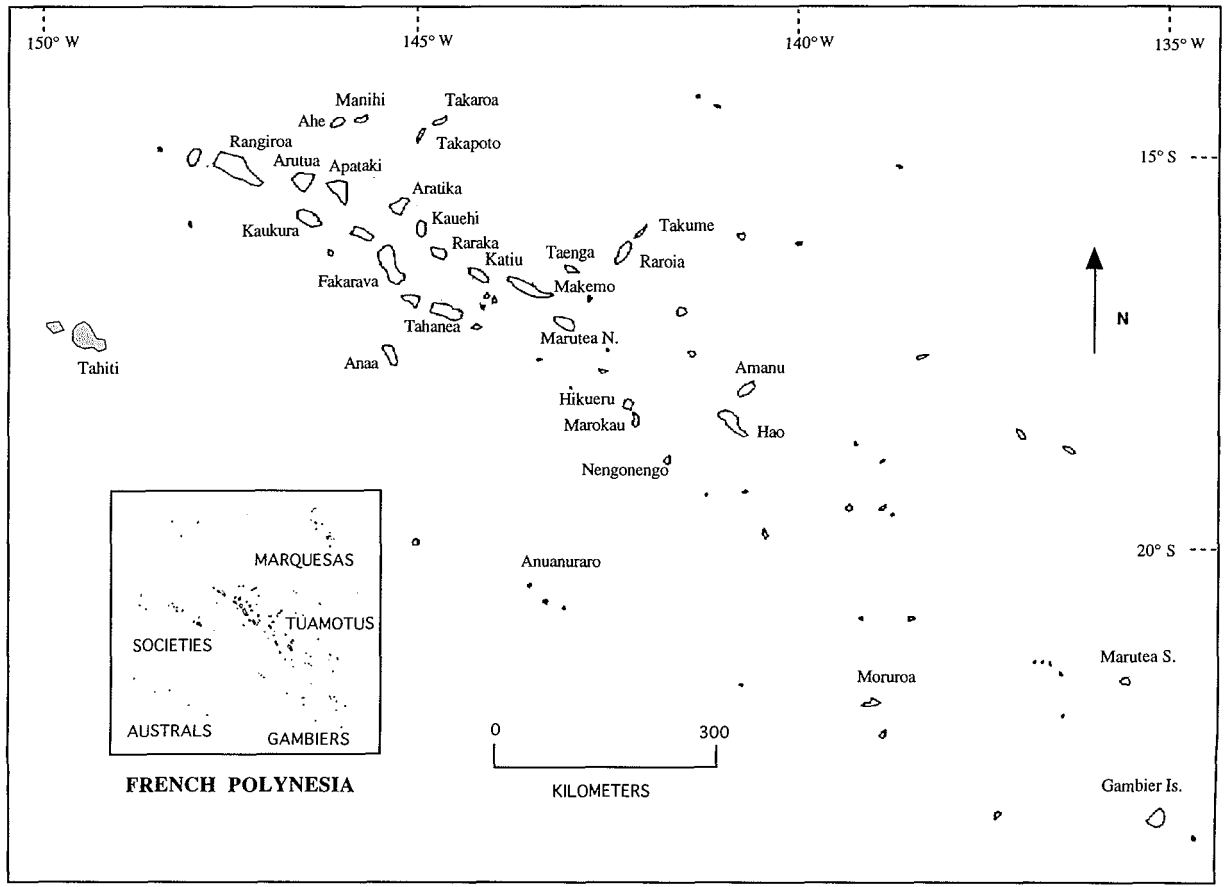

FIGURE 1. The Tuamotu Archipelago

land was often registered and sold without approval of other right holders. The situation was exacerbated because the French court and the indigenous *to'ohitu* frequently had different opinions on land law (Panoff 1971; Ravault 1982).

Traditional lagoon rights were eroded even more easily than land rights. In 1890, despite vigorous protests by Tuamotuan populations (see Rapaport 1995), the French governor issued a decree of public domain, bringing all lagoons under the control of the colonial administration. Henceforth, any French citizen authorized by the colonial administration had rights to exploit lagoons. Large lagoon concessions could be allocated to French oyster farmers. Although settlers made a few attempts, oyster farming did not succeed at the time. But the lagoons were subjected to intense exploitation by pearlshell traders from Tahiti.

Following World War II, mounting political pressure in Tahiti and internationally led France to grant autonomy to French Polynesia. Under the *loi cadre* of 1957, legislative and adminstrative competencies were granted to the Tahitian government, including rights to control public domain (and thereby, nearshore maritime space). In 1958, the Tahitian territorial assembly, with very little input from the Tuamotuan people, initiated a series of laws governing the allocation of lagoon concessions (*JO*, 31 Oct 1978, 1072). The inhabitants of each atoll were granted no exclusive rights or benefits. Anybody could apply for concessions, but those with capital were often favored.

Pearl farming was successfully established in the Tuamotus by 1980, following two decades of efforts by the Tahitian government, external entrepreneurs, and local populations. In that year the Tahitian Department of Sea and Aquaculture began reviewing requests for lagoon concessions. Applicants were questioned about the area, location, and use desired. They were also asked to provide proof of residence (on the atoll), landholdings (near the desired concession), and the local mayor's signature, but the only absolute requirement was nationality (French). Approved concessions were valid for nine years. Concession awardees were expected to pay annual fees and prohibited from subleasing to other parties.

Tenure Regimes on Takaroa

Recent fieldwork on Takaroa Atoll (Figure 2), a pearl-boom community in the western Tuamotus, provided a unique opportunity to simulta-

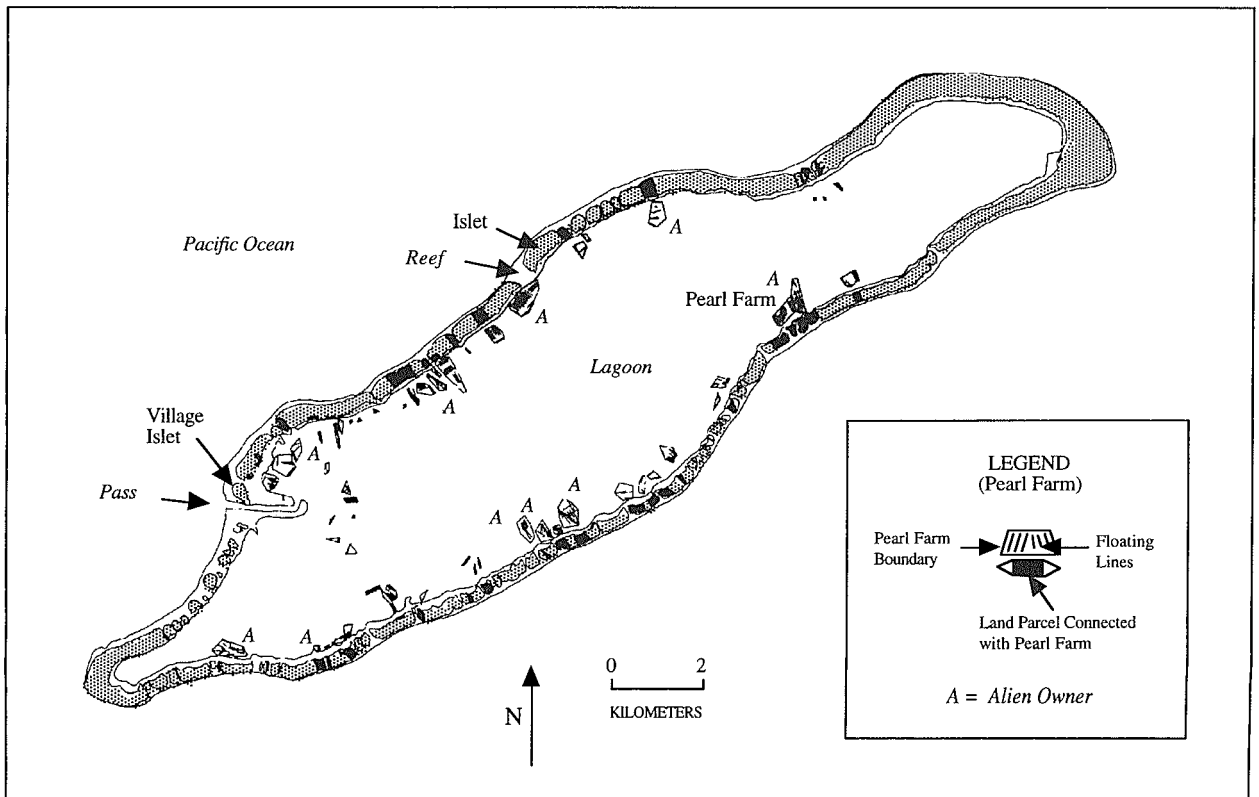

FIGURE 2. Pearl farms at Takaroa Atoll.

neously examine land and lagoon tenure regimes in operation. Colonial modification of tenure systems, intended to facilitate privatization and commoditization, has been only partly successful. Reluctance to divide the land has helped limit land alienation, while preserving use rights for Islanders and their descendants. Lagoon rights, which were expropriated to the public domain a century ago, have been more difficult to protect.

As recently as 1983, there were only 33 households on the atoll (166 persons) and the economy was based entirely on copra. Pearlshell production had stopped in the 1960s, when overexploitation caused a precipitous decline in stocks (Intes 1982), and pearl oysters had again become abundant. Spat collection efforts were highly successful, and by 1986 Takaroa had become a mecca for pearl boomers. In 1991, there were 106 households (527 persons). Of these, 30 were headed by long-term residents (over a decade), 60 by return migrants from Tahiti and New Caledonia, and 16 by outsiders (recently arrived Tahitians and Chinese-Tahitians).

Outsiders had acquired rights to both land and lagoon space, but lagoon alienation was much more substantial. Of 52 pearl farms, 42 (81 percent) had been established by indigenous Islanders and 10 (19 percent) by others. The ten outsider pearl farmers occupied 155 hectares of shorefront lagoon space (45 percent of the total occupied area) and produced an estimated 13,000 marketable pearls (41 percent of all production). Of 51 land parcels (165 hectares) adjoining the pearl farms, 33 (65 percent) were occupied by Islanders and 18 (35 percent) by outsiders. All except 4 land parcels used by outsiders were held by lease or allowance from Islanders and subject to reclamation by the owners.

From the standpoint of the "new" tenure codes introduced by the French, territorial space is a commodity, indigenous Islanders cannot be favored over other French nationals, and alienation is basically a nonissue. According to the "old" view, however, land and lagoons are an ancestral bequest, indigenous descendants are rightly privileged over outsiders, and alienation is a major problem. Today, tenure regimes are poised midway between colonial laws and traditional practices, allowing indigenous Islanders room to maneuver in the struggle over scarce and highly valued land and lagoon resources.

Indivision

Land is valued not only for itself but also because of the rights thereby extended (strongly by tradition and to a lesser degree by administrative

concession policy) to the adjacent lagoon. Rights to land are ultimately pivoted on the *tomite* (committee), indigenous claims that were officially investigated, surveyed, registered, and given legal title by the French colonial administration (1888–1902). The *tomite* survey, conducted by local chiefs, judges, and policemen on the basis of testimony by knowledgeable Islanders was not mapped, but it did list each parcel of land by name, boundaries, and individual claimants.

Following the death of the *tomite* titleholders, the land was generally left in a state of indivision, or collective ownership. Because no single person held the title, individual alienation was essentially impossible (unless all claimants agreed), and all potential inheritors were assured future access to the land. Subsequent use rights did not follow any specific formula and were generally allocated from parent (of either sex) to child in accordance with residence (on or off the atoll), needs (family size), willingness and ability to work (land and adjacent lagoon).

The French, and now the Tahitian administration, have tended to view indivision as an obstacle to production and have done everything possible to promote land division and appropriation by the market. But this policy ignores the fact that the traditional land tenure system has protected the Islanders from dispossession. The maintenance of traditional tenure practices, even in modified form, constitutes an effective form of resistance to external intrusion (conscious or not). On Takaroa, the only land that has been alienated resulted from debts by the original *tomite* titleholders (who legally held the land, and could sell it, individually).

Informal Access

French civil law does not accord inheritance rights to children of an unmarried mother unless official recognition by the father is inscribed in the birth certificate. In many cases, this is not done, and a child may not be legally entitled to inherit. Nonetheless, in this and other situations, use rights are often designated informally by the parent. Local practices of social relations and tenure offer an insurance for indigenous Islanders, ensuring them access to land, provided that good relations are maintained. In time (usually thirty years), prescriptive rights (squatter's rights) may be established and legally recognized.

Two shorefront land parcels were occupied by brothers, both migrants from Tahiti with a tenuous inheritance linkage (Figure 3, Case A). The *tomite* land had originally been held by a first partner (1) of their great-

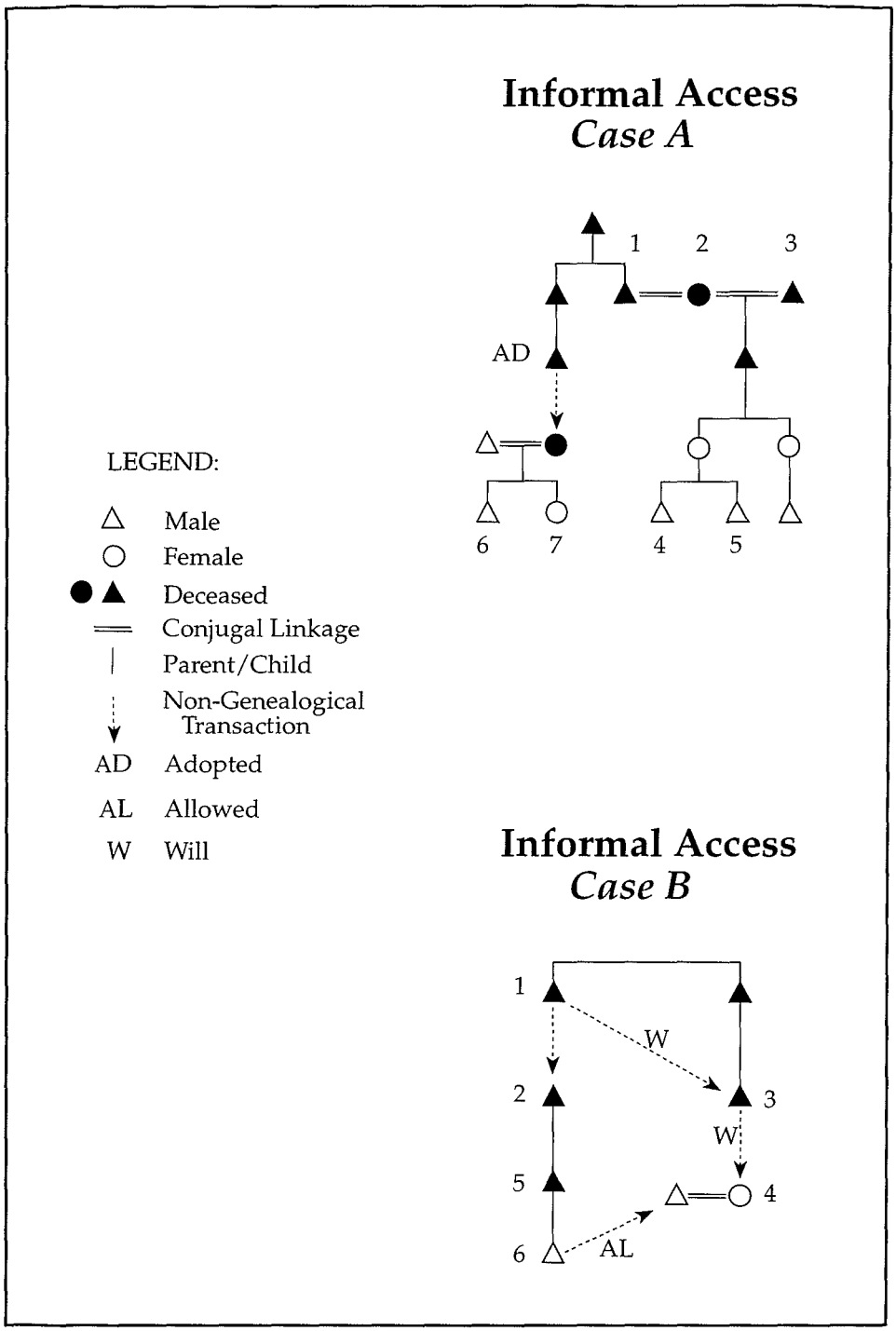

FIGURE 3. Two cases of informal access to land at Takaroa.

grandmother (2). The brothers (4 and 5) were descended from a second partner (3) and did not have any legal rights to the land. On Takaroa, the land had been occupied by the descendants of the first partner (6 and 7) for many years. When the two brothers arrived on Takaroa, they were permitted to occupy the land without objection by their relatives and neighbors.

A related situation occurs with *fa'amu* (feeding), traditional adoption. A grandmother often adopts one or more grandchildren, but distant relatives and strangers may also be adopted. *Fa'amu* is not legally recognized unless it has been officially validated and inheritance rights have been specifically established for the adoptees. But on Takaroa, informal adoptive rights continue to play an important role in land use. The same principle holds with *parau tupuna* (ancestral words), unwritten wills, which are not valid in court, but are recognized by the Islanders. The case that follows (Figure 3, Case B) illustrates these generalizations.

A *tomite* titleholder (1) willed his land to two individuals: an adopted son (2) and a nephew (3). The nephew's daughter (4) moved to Tahiti while young, and the land on Takaroa was occupied by the grandson (5). When the pearl boom began, the nephew's daughter decided to move back to Takaroa and revive her father's claim. However, a complaint arrived from the great-grandson (6), now living in Tahiti, arguing that his branch had the stronger claim. The nephew's daughter (4) traveled to Tahiti with a gift and asked permission to remain on the land. Permission was freely granted. Here too, de facto tenure arrangements assured access to ancestral land.

Alienation

Because almost all land remains in a state of indivision, sales are costly and time consuming. A professional surveyor must be contracted to travel to the home atoll, and a competent attorney must be hired. All the family members must be contacted, copies of birth certificates, death certificates, and other papers must be obtained, and everybody must be persuaded to agree on the details of the division. As many landholding groups are now into their sixth or seventh generations, with members living overseas, the expense, logistical problems, and long-distance negotiations over allocation usually make this a prohibitive task.

In spite of these difficulties, some land has been alienated through sale. Outsiders have also obtained land through lease, allowance (without

cost), and prescription. An outsider caretaker is sometimes designated to watch over absentee rights. Gifts are generally given periodically, but this form of occupation is more like allowance than leasehold. These forms of temporary occupancy are frequently used by outsider entrepreneurs as ways to begin pearl farming and establish a base on the atoll while negotiating for a more permanent tenure status, as is illustrated by the following example.

"William Lee," a large-scale pearl farmer on Takaroa, initially gained entry through the purchase of a small, previously alienated parcel of land. The parcel was originally alienated in 1923 when the original titleholder was in bankruptcy. It was then sold to a Chinese trader, who resold it to his daughter, born to a woman of Takaroa. This woman was approached by Lee, who needed a land parcel to support his request for a lagoon concession. She was reluctant to sell the parcel, but her husband had been involved in a court case and had incurred substantial legal debts. The land parcel was subdivided and a tenth of a hectare (a minuscule parcel) was sold to Lee.

Lee was granted a concession, but he soon expanded beyond his allocated parcel and disputes arose with the neighboring landholders. Lee began to look for additional parcels of land, but individualized ownership was scarce and few Islanders would sell portions of collective land. He had to settle for less permanent means of land acquisition. His favored location was across the lagoon, in an area where there was less competition over space. Land was leased and the money distributed between all claimants. Other adjoining parcels were obtained through an allowance by a senior member of a different landholding group.

Regulatory Violations

Islanders often set up spat collection and pearl farms without an authorized lagoon concession and afterwards "regularize" their operations. Of the 52 pearl farms in existence in 1991, 11 (22 percent) had no authorization from the Department of Sea and Aquaculture. Outsiders also sometimes engage in officially unauthorized pearl farming, but this is generally effected by prior agreement with Islanders from whom they have land rights. Local objection to outsider pearl farming is likely to occur when the consent of all the relatives has not been secured or when pearl-farming activities begin to expand beyond the initially agreed limitations.

Administrative regulatory limits on spat collection (150 meters of line

per farmer) and pearl culture (generally less than a hectare) are routinely exceeded. In 1991, the total authorized length of line for spat collection was 13,000 meters, while the actual length of spat collection lines was 107,000 meters (thirteen times the authorized length). Similarly, the total authorized area for grow-out and pearl culture amounted to 47 hectares, while the actual lagoon area occupied was 345 hectares (seven times the authorized area).

It is difficult for the Tahitian administration, situated hundreds of kilometers from the atolls, to monitor the extent to which pearl farming conforms to administrative guidelines. The administration has initiated periodic surveys of pearl farming on a number of atolls. However, these surveys have been circumvented—by completely evading the survey; by understating the area actually being farmed; by disguising the real ownership of surveyed farms; by moving or removing the lines at the time of the survey; and by giving misleading information about the use of specific lines.

Reclaiming the Lagoons

The most explicit assertion of traditional lagoon rights took place through the efforts of Mahinui Pou, a native of Takaroa who returned to the atoll from Tahiti. Pou had been active in the Tahitian independence movement and had previously resided in New Caledonia. In August 1990, concerned over increasing expansion by outsider entrepreneurs, Pou organized the *Tomite Paruru Ia Takaroa* (Association to Protect Takaroa). A principal aim of the association was to "ward off the possibility of sale or purchase of land to and by an alien" (*JO*, 23 Aug 1990, 1268; my translation). The association also attempted to harass and expel the already established outsider pearl farmers.

The association's legal argument was based on protectorate guarantees to respect traditional property rights, on an 1859 governor's letter recognizing the right to defend lagoons from "unscrupulous" Europeans, and on petitions asserting Tuamotuan lagoon claims prior to the 1890 decree of public domain (Rapaport 1995). On two occasions (October 1990 and August 1991) the association organized the population, seizing several tons of equipment arriving by cargo boat for outsider pearl farmers. However, local support waned following the arrival of gendarmes and the deportation of association leaders. In Tahiti, the association leaders were charged with robbery, violence, and incitement to riot, but were released with suspended sentences on promise of future good behavior.

The administration took note of these events and promised to pay more attention to local concerns. High-level government delegations were sent from Tahiti, headed by President Gaston Flosse and Simone Grand, director of the Department of Sea and Aquaculture. Lengthy meetings were held with the island council and the community as a whole. When some Islanders protested against the outsider pearl farmers, they were told that indigenous Islanders had themselves previously sold land to foreign entrepreneurs and, in any case, the allocation of Tuamotuan lagoon concessions was legally the exclusive prerogative of the Tahitian administration, and not the local atoll communities.

Conclusion

> "If your majesty wishes to be promptly obeyed," he said, "he should be able to give me a reasonable order. He should be able, for example, to order me to be gone at the end of one minute. It seems to me that conditions are favorable."
>
> ANTOINE DE ST EXUPERY, *The Little Prince*

The weakening and negation of indigenous tenure systems by European colonial authorities has not been unique to the Tuamotus. Throughout the Pacific, the initiatives of colonial governments, commercial interests, and missionaries led to relocations, cultural disruption, and outright expropriations (Crocombe 1972). Traditional lagoon rights are of particular concern on coral atolls, which have few other resources. With the advent of decolonization, independent and autonomous Pacific Island governments have been faced with an important dilemma: how and whether to restore indigenous lagoon rights that have been unrecognized for many generations.

The articulation of postcolonial lagoon policy is still at a very early and tentative stage in most areas and has only recently gained the attention of scholars, many of whom have served as consultants to local governments and international agencies. Scholarly opinion has been divided, however, on the usefulness of traditional lagoon tenure. Some have suggested that traditional systems of tenure provide culturally sanctioned rules for resource allocation and discourage overexploitation. Others have argued that traditional tenure systems encourage friction and overharvesting, or,

conversely, prevent effective exploitation by those with adequate capital and expertise (Johannes and Macfarlane 1990).

Johannes and Macfarlane (1990) suggested that three critical questions need to be addressed by governments: Can traditional tenure systems contribute to conservation of marine resources? How robust and clearly defined are tenure rights? And is traditional lagoon tenure compatible with government marine resource policies? In the case of the Torres Strait fisheries, Johannes and Macfarlane distinguished between "home reefs," where traditional tenure serves to usefully allocate resources and spread out fishing pressure, and an "extended" marine zone, where traditional tenure systems have been largely forgotten and would "create a jurisdictional nightmare" if revived.

The problem, however, is that if traditional lagoon rights are "imperfectly remembered" and seem to have "generally not been defended," does it logically follow that "open access" policies instituted by colonial tenure systems should be ratified without modification by emerging postcolonial administrations? James Scott (1990) has shown that resistance is often demonstrated in a "quiet" or "masked" fashion, and that this may be the only rational way to cope with the imbalances of power characteristic of colonial impositions. And even if traditional concepts of lagoon tenure are not necessarily advantageous from an ecological standpoint, as Polunin (1984) has convincingly argued, does this provide the legal or moral justification for violating the rights of local communities?

In the Cook Islands, currently experiencing a pearl-farming boom on two northern atolls, many Islanders reportedly felt that detailed reinstatement of traditional tenure systems would be impractical because of "long-erased traditions," erosion of local leadership, and the likelihood of "endless disputes," while the central government feared loss of both control and revenues (Sims 1991). Nonetheless, the central government, mindful of the rights of local communities, did reinstate control of lagoons to the elected island councils of each atoll in a 1982 bill that specifically refers to pearl oysters and pearl farming. Conflicts have emerged locally, but are being resolved in coordination with the central government though consultations and consensus building.

In French Polynesia, the approach of the central government has been much more heavy-handed than that of the Cook Islands. Ideological premises have been inherited wholesale from colonial predecessors, leaving the Tahitian administration with exclusive control of Tuamotuan lagoons.

It is true that indigenous concepts of lagoon tenure today vary considerably from those of the past. But to the Tuamotuans, justice is the critical issue. Even after generations of immersion in a legal system whose language is private ownership and public domain, the Tuamotuans are unwilling to completely give up their systems of collective landholding and exclusive lagoon rights.

The Tahitian administration claims that it alone has the management and scientific expertise necessary to ensure profitability and avoid overuse, but this is only part of the truth. In a vast and fragmented archipelago such as the Tuamotus, a distant regulatory authority cannot manage pearl farming effectively without cooperation at the local level. The existing situation is a chaotic free-for-all, with potentially disastrous results for everyone concerned. Much could be gained through a nonpaternalistic working relationship. The Tahitian administration can provide biological guidance and facilitative expertise, while communities independently deliberate on allocation, entry limitations, and quotas, based on local concepts of relationships and rights.

The obvious solution would seem to lie in rethinking the current system of lagoon concession allocation. Power could be further devolved from the central government to local mayors and island councils who are intimately familiar with local systems of inheritance and use rights. Concerns have been raised that "poorly qualified" candidates for lagoon concessions would be favored over those with greater reserves of capital, technology, and management expertise. These concerns can probably be surmounted in an iterative fashion through consultation and consensus (as is being done in the Cook Islands). But the willingness of the central government and its agencies to cede recently acquired power and revenues is quite another story.

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Abstract

The Tuamotuan pearl-farming boom, currently into its second decade, has led to an intense scramble for limited land and lagoon space. Fieldwork on Takaroa Atoll has shown that Islanders have generally successfully defended their landholdings from alienation by selectively retaining aspects of their traditional tenure systems. They have been less successful with their lagoons, claimed by the Tahitian administration as part of the public domain. The current situation is a chaotic free-for-all, potentially leading to disastrous overexploitation of Tuamotuan lagoons. Emerging postcolonial administrations and their management consultants are urged not to neglect the claims of small outlying communities.

KEYWORDS: Pearl farming, land tenure, lagoon tenure, Tuamotu Archipelago